HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1274 of 2006

-

-

Between:

District Collector, Krishna District,
Chilakalapudi, Machilipatnam (P.O),
Krishna District and two others

……Appellant

And

Gutta Laxmi Jayaprada

……Respondent

:: JUDGMENT ::

Counsel for the Appellants : Government Pleader for Irrigation and Command Area Development

Counsel for the Respondent : Shri M.V. Durga Prasad

-

-

December 06, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 24-07-2006 passed by the learned Single Judge in Writ Petition No.22830 of 1999, whereby he directed the non-petitioners (the appellants herein) to initiate land acquisition proceedings in respect of land comprised in Survey Nos.65/1 and 65/2 of China Nandigama Village, G. Konduru Mandal, Krishna District, complete the process within three months and pay compensation to the writ petitioner (the respondent herein).

In the affidavit filed by her, the respondent averred that she is the owner in possession of agricultural land measuring Ac.4-36 cts. comprised in Revenue Survey No.65/2 of China Nandigama Village, G. Konduru Mandal, Krishna District and has been cultivating the same. She further averred that non-petitioner Nos. 2 and 3 (appellant Nos.2 and 3 herein) got a channel dug up through her land on the night intervening 16th and 17th of April, 1999 and in this manner her right has been adversely affected. She also alleged that despite issue of legal notice dated 19-5-1999 by her advocate, the appellants did not take the remedial measures.

In the detailed counter affidavits dated 24.11.1999 and 28.3.2005 filed by Shri G.V.S. Chalapathi Rao, Assistant Engineer, Special Section, Irrigation Department, Kondapalli who was also having additional charge of Special Section, Mylavaram, Krishna District, the petitioner's (respondent herein) assertion regarding digging of canal was denied. According to the deponent, there existed a natural water course since time immemorial and the department had

only undertaken repair work at the instance of water users associations, because due to growth of weeds etcetera, the surplus water course could not take the total quantity of surplus water and the spilled water used to destroy the crops of ayacutdars. All this is evinced from paragraphs 3 and 4 of the second counter affidavit of Shri Chalapathi Rao, which are extracted below:

> "3) In reply to the averments made in Para 2 of the Petitioner's affidavit it is submitted that Pedda Tank and Marla Tank of Nandigama are two separate Minor Irrigation Tanks formed several decades back with an ayacut of 388.02 acres and 130.77 acres respectively in Chinna Nandigama village of G.Konduru Mandal. Pedda Tank of Nandigama received water from Kothulavagu through the supply channel. After the tank is filled up, the surplus water will spill over into Marla Tank. After Marla Tank is filled up, the surplus water of both the tanks will flow into Budameru River through the surplus course after traveling for a length of about 1.000 K.M. This surplus course from Marla Tank to Budameru River is naturally formed and is under operationm since several decades since the inception of the tanks. The existing surplus course is passing through the R.S.Nos.23/3, 10/13, 10/13, 9/9, 61/4, 65/2 and finally joins Budameru river in R.S.No.64 of Nandigama village of G.Konduru Mandal. There is no other way except this natural course to dispose the surplus water of the tanks into Budameru river. The surplus course is clearly earmarked in the above mentioned Survey Numbers in the field Measurement Books (F.M.Bs) and also shown in the village map dating back to 1950 of the survey and land records. The allegation of the Petitioner is that she is the absolute owner of the agricultural land measuring Ac.4-36 cents covered by R.S.No.65/2 of Nandigama village and has obtained the title under registered Sale deed dated 5-7-1968. Out of Ac.4036 cents, an extent of about 0-40 cents is covered with surplus course even at the time of the alleged purchase and the land is not at all useful for any agricultural purpose and the allegation that the Petitioner is cultivating the land covered by surplus course is far from truth. The surplus water course passes through the land which is

owned by and is under the possession of the Irrigation department for flow of surplus water of the tanks. It is pertinent to note that the surplus course has been in existence since time immemorial. There has never been any objection from any individual either claiming ownership to the land or claiming compensation for the land occupied by the surplus course including the Petitioner. The present claim of the Petitioner that she is the owner of the said land is not true and is not borne out by record and she is put to strict proof of the said claim.

4) In reply to the averments made in Para 3 of the Petitioner's affidavit it is submitted that the maintenance of the tanks and connected water courses is done by the Water Users Associations. The existing surplus course of the tanks was heavily shoaled up, due to the growth of weeds and plants like Impomia cornea, Jammu etc. and loose earth in the bed of the surplus course and this was obstructing free flow of flood water. Even during normal rains, the surplus water would spill over on the banks along the surplus course and this was inundating the ayacut to an extent of about 100 acres under both the tanks. Thereby the ayacutdars were loosing their crops and facing heavy financial loss. To rectify this situation and to avoid submersion of ayacut, the water users associations of Pedda Tank and Marla Tank have passed separate resolutions dated 5-4-1999 asking the Assistant Engineer, 3rd Respondent herein, to prepare the estimates for carrying out repairs to the surplus course with maintenance grant allotted by the Government at Rs.100/- per acre to each water users associations. Accordingly, the estimates have been prepared for removing the weeds, plans and shoaled up earth from the bed of the existing surplus course so as to allow free flow of water and avoid submergence of adjacent lands. The said work was got executed by the Water Users Associations on 16th, 17th and 18th of April, 1999. But no new 'Channel' was excavated as alleged by the Petitioner and no damage or loss of land or property took place due to taking up of repair work. The existing surplus course was only repaired to facilitate free flow of water since it was blocked. Due to carrying out of repairs, the Petitioner's land in other Survey Numbers also get relief from

submersion. The Water Users Association of Pedda Tank and Marla Tank have taken up the works and executed the works of repairs but it has not dug any new channel. The allegations that a new channel was dug over night is false and baseless."

The learned Single Judge allowed the writ petition and issued direction to which reference has been made hereinabove.

The learned Government Pleader argued that the direction given by the learned Single Judge for initiation of acquisition proceedings and payment of compensation to the respondent is liable to be set aside because the land belonging to the respondent was not used for digging the water course. He referred to the averments contained in the affidavits of Shri G.V.S. Chalapathi Rao to show that the surplus water course was in existence since 1950 and argued that without taking note of the detailed counter affidavits filed on behalf of the appellants, the learned Single Judge could not have ordained acquisition of the land.

Shri M.V. Durga Prasad, learned counsel for the respondent supported the order under challenge and argued that the direction given by the learned Single Judge may not be up set only on the ground that the same does not contain detailed reference to the affidavits of Shri G.V.S. Chalapathi Rao.

We have considered the respective submissions. In our opinion, the order under challenge is liable to be set aside because while granting relief to the respondent, the learned Single Judge not only ignored the detailed affidavits filed on behalf of the appellants, but wrongly assumed that the non-petitioners had admitted the digging up of the canal. A careful reading of the averments contained in the counter-affidavits filed on behalf of the appellants, which have been extracted hereinabove, shows that there was a serious dispute

between the parties on the issue of digging of the respondent's land on the night intervening 16th and 17th April, 1999. While the respondent pleaded that her land had been dug up, the appellants took up the stand that the water course was already in existence since 1950 and the authorities had only undertaken the repair work. For the reasons best known to her, the respondent did not file rejoinder to the affidavits of

Shri G.V.S. Chalapathi Rao. Therefore, there was no reason for the learned Single Judge to have ignored the categorical assertions contained in those affidavits and issue direction for acquisition of the land belonging to the petitioner by presuming that the same has been used for construction of water canal. In our considered view, the failure of the learned Single Judge to direct his attention to the relevant pleadings has resulted in miscarriage of justice and, therefore, it is apposite to set aside the impugned order and remand the case for fresh adjudication of the writ petition filed by the respondent.

We are further of the view that while exercising power under Article 226 of the Constitution of India, this Court exercises original jurisdiction and, therefore, the Bench deciding the writ petition is duty bound to advert to the pleadings contained in the affidavits of the parties, the documents filed by them and then decide the issue raised in the writ petition. Non-consideration of the material averments contained in the affidavits of the parties, as has happened in the present case, results in miscarriage of justice and adds to the overflowing dockets of the Court, because the aggrieved party necessarily seeks intervention of the Division Bench, in case the matter has been decided by the Single Bench and, of the Supreme Court, if the matter is adjudicated by the Division Bench.

For the reasons stated above, the appeal is allowed. The order

under challenge is set aside and the case is remitted to the Single Bench for fresh adjudication of the writ petition filed by the respondent.

As a sequel to allowing the appeal, WAMP No. 2677 of 2006 filed by the appellants is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

06-12-2006

ks